THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE DR.JUSTICE G.YETHIRAJULU

WRIT PETITION Nos.11777 OF 2002, 18107 OF 2002, 14715 OF 2002, 23732 OF 2003 & CRP.NO.4830 OF 2003

(DATED : 29.12.2005)

W.P.No.11777 of 2002

Between:

H.Madhusudhan S/o H.Swamy, R/o Kanojiguda, Malkajgiri

Mandal, Ranga Reddy District & others

….Petitioners

A n d

Joint Collector, Ranga Reddy District at Hyderabad

& others

…Respondents

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WRIT PETITION Nos.11777 OF 2002, 18107 OF 2002, 14715 OF 2002, 23732 OF 2003 & CRP.NO.4830 OF 2003

COMMON JUDGMENT:

Heard Sri K.Pratap Reddy, T.Subrahmanyam, Sri Vedula Venkata Ramana, Sri P.M.Gopala Rao and Sri T.Jagadish, learned Senior Counsel appearing for the parties and the learned Government Pleader for Revenue.

Since in all these cases, challenge is being made against the very same proceedings, hence, they are being taken up together for disposal.

The petitioners in W.P.No.11777 of 2002 and 14715 of 2002 claim as the successors in interest and legal representatives of the erstwhile protected tenants. In W.P.No.18107 of 2002 and C.R.P.No.4830 of 2003, which is filed under Section 28 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short "the Act"), the petitioners claim to be the purchasers of the lands in question from the Inamdars whereas petitioners in W.P.No.14715 of 2002 claim to be the purchasers from the tenants in pursuance of an agreement of sale, who also filed O.S.No.195 of 1995 and the same having been decreed, the first appeal is pending. The petitioners in W.P.No.18107 of 2002 and C.R.P.No.4830 of 2003 also filed an application in W.P.M.P.No.6443 of 2004 to implead itself as respondent No.5 in the writ petition No.11777 of 2002. Having regard to the claims as set out and with a view to give an opportunity of hearing, the said implead petition stands allowed.

The facts, which are necessary for disposal of all these cases is in regard to the entitlement of occupancy rights and consequently the certificates passed therein under the provisions of the Act. The lands in question are admeasuring to an extent of Ac.62-16 gts. In survey Nos.373, 375, 376, 378, 379 to 381 and 386 situated at Khanojiguda, H/o Alwal village, Malkajgiri Mandal in Ranga Reddy District. The said village is stated to be a jagir village. There have been rival claims, one as protected tenants and other as Inamdars. Some of the petitioners claim that they are the successors of the original protected tenants, namely, Shivalingam and one Achaiah. They were granted protected tenancy certificates under Sections 35 and 37 of the A.P (T.A) Tenancy and Agricultural Lands Act, 1950. Further, the land being mafi inam, consequent upon the advent of the Act, the persons in occupation on the relevant date, i.e., 01.11.1973 are entitled to the occupancy rights *de horse* protected tenancy rights under the Tenancy Act. It is claimed that since their father

was issued protected tenancy certificate, they applied for grant of occupancy certificates before the competent authority, namely, Inams Tribunal-cum-Revenue Divisional Officer, Chevella, who after holding an enquiry passed an order on 07.01.1995 holding that they are entitled to the occupancy rights having regard to the proof of possession supported by entries in the pahanies. It was also held that their predecessors in title being protected tenants, there is nothing on record to show that there was any surrender by the said protected tenants prior to 1954. However, as against the said orders granting occupancy rights in their favour, the Inamdar, namely, respondent No.3 in W.P.11777 of 2002 filed regular appeal as provided for under Section 24 of the Act before the appellate authority, namely the first respondent, i.e., Joint Collector, Ranga Reddy claiming that such occupancy rights should be granted only in his favour. In the said proceedings, the petitioners in W.P.No.18017 of 2002 and C.R.P.No.4830 of 2003 got impleaded as Respondent No.8. Similarly, the petitioner in W.P.No.14715 of 2002 was also a party as respondent No.10. After hearing all the sides, the said appellate authority has passed orders on 29.4.2002 allowing the appeal and setting aside the occupancy rights granted in their favour mainly on the ground that the original protected tenants have already surrendered their rights much before 1954 and therefore the question of grant of occupancy rights and certificates does not arise. Further, there is no supporting and valid entries for grant of any such occupancy rights and it was also found that the lands in question are in fact, Government lands. Challenging these orders, all these present cases are being filed.

The contention of the learned counsel appearing on behalf of the petitioners is to the effect that having regard to the fact that their possession is well supported by entries in the pahanies as on the relevant date, the appellate authority could not have stated that it would not constitute valid basis under the Act. That apart, the finding that the land is that of Government is totally without any basis and the petitioners were not put to any notice as such nor given any opportunity to rebut on these aspects. It is also their contention that having regard to the chequered events and the documents would amply show the petitioners' claim for grant of occupancy rights.

Repelling the said contentions, the claim of the petitioners was sought to be denied and further stating that the order of the appellate authority is a well considered and

reasoned order and it does not warrant any interference under Article 226 of the Constitution of India.

Considering these and other submissions as made on behalf of the petitioners, the main question, which arises for consideration in all these proceedings is as to whether on the facts and circumstances, the impugned orders of the appellate authority, reversing the order of the primary authority and repelling the claim for occupancy rights by the petitioners is valid?

From the pleadings and also on perusal of the record, the undisputed facts are that the village in which the lands in question are situated is a jagir village and also the Inam. It is not seriously denied that the original predecessors in title, namely, Shivalingam and Achaiah were the protected tenants, who appear to have been recognized as such, under Sections 35 and 37 of the A.P (T.A) Tenancy and Agricultural Lands Act, 1950. It is also not in serious dispute nor challenge to the fact that protected tenants surrendered their tenancy rights prior to 1954 and their names were rounded off by making necessary entries and corrections in the tenancy register. Even the claim made for succession under Section 40 of the Tenancy Act by one wing of the legal representatives was also rejected by the competent authority concerned, namely, Mandal Revenue Officer as per orders dated 7.10.1994. Therefore, there is no dispute, much less a claim as protected tenant and the only claim which revolves around and to be considered is for grant of occupancy rights on the basis of the Act as they were in possession of the lands on the relevant date.

It is seen from the record and also the finding of fact as arrived at by the appellate authority that an application has been filed in Form –1 for grant of occupancy rights, whereupon, a report was called for from the Mandal Revenue Officer, Malkajgiri who stated that though the name of Shivalingam is reported to be shown as protected tenant in Survey No.373, 375, 376,378 and 379 and the name of Achiga is reported against Sy.Nos.380, 381 and 386. However, their names were rounded off as against the old survey number 289, which corresponds to above mentioned survey numbers. It was also stated in the report that they are not in possession of the lands.

However, the Revenue Divisional Officer, the primary authority held that they are not entitled to claim any status as legal representatives of protected tenants, but having regard to the possession, they are entitled to grant of occupancy rights. Further, considering the fact that the order of the primary tribunal was rested on certain entries which were also held to be not regular one and therefore, the appellate authority considering the fact that there is no proof of tenancy much less lease or rent receipts, held that the question of any valid possession or any supporting entry in the pahanies is not acceptable. It is also observed by the appellate authority that the pahanie entries made by the Patwari are also conflicted for the crucial years, which describe the classification of the land as patta, while for the other years, it is described as Dastagardha. It is also observed that the pahanies do not constantly show the same name continuously or consistently. The alleged tenancy as claimed by them was held to be not proved. Therefore, the appellate authority having given a categorical finding on appreciation of facts and the same resting upon the material produced and available before him to the effect that there being no proof of possession, the question of granting any occupancy rights, much less certificates does not arise.

Even in regard to the claim made by the association in the other writ petition, the same was also rejected on the ground that they cannot claim any relief as such, especially when they purchased the lands from the inamdars who had no title at all and the very claim of the Inamdars is being negatived.

In this regard and supporting their claim, several contentions are sought to be urged referring to various provisions under the Tenancy Act and the Inams Abolition Act. However, the entire case rests on the basic fact as to the possessory rights without proof of which, occupancy rights either can be recognized nor can be granted. Having regard to the factual background as noted by the appellate authority, the claimants who sought for occupancy rights basing upon possession cannot claim through original protected tenants whose tenancy was already stood surrendered, which is evident and supported by the Tenancy Register. Therefore, they would no longer remain as protected tenants nor they have a right as such as a tenant. It is not their case that there was any fresh tenancy created, existed or continuing as such. As rightly held by the appellate authority, which is a pure finding

of fact, in the absence of proof of lease, tenancy supported by valid material, the claim cannot be upheld. This Court would not venture to re-appreciate the entire evidence to come to a different conclusion, more so, having regard to the findings of fact, which are based upon appreciation of evidence and material available before such an authority which is well supported by reasons.

Coming to the plea raised on behalf of the petitioner that having regard to the nature of proceedings arising out under the provisions of the Act, the finding given by the appellate authority, namely, respondent No.1, while rejecting the claim of all the persons holding that the lands in question are Government lands cannot be sustained and therefore, even the direction given to the concerned Mandal Revenue Officer to take care of the lands cannot also be upheld. There cannot be any doubt that no such claim has been made on behalf of the Government at any point of time to the effect that the said land is a Government land and therefore there exists any title on its own. Admittedly, it was a jagir village with imams, grant and the protected tenancy already stood surrendered and therefore, the question of claiming any independent rights by the Government does not arise. Even otherwise, no such claim has been put forward by the Government in any manner whatsoever. That apart, surprisingly, the said finding is given for the first time in the order without petitioners or any of the parties who were appearing before the appellate authority were given any notice thereof or being heard as such. Even now, it is not the case of the authorities that the Government has got its own independent rights. Having regard to the nature of proceedings and their restricted scope, the only question remain before the authorities was as to whether the occupancy rights can be granted, which has to be found on the basis of possession of the claimants who applied for. Therefore, the said scope cannot be widened giving a finding, which goes beyond the very dispute and the nature of powers conferred under the particular legislation. Apparently, having rejected the claim of all the persons, the appellate authority appears to have held that the land belongs to the Government. In the circumstances, we hold that such a finding is wholly unsustainable. However, irrespective of the fact that we disagree with such a finding, all these cases do not merit any consideration nor make out any case warranting interference of the impugned orders.

In the above circumstances, we do not find any merits in the writ petitions and the revision and the same are accordingly dismissed. No order as to costs.

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B.PRAKASH RAO, J

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DR.G.YETHIRAJULU, J

29th December 2005

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